

SUBJECT: Order of argument in criminal cases

COMMITTEE: Criminal Jurisprudence: favorable, without amendment

VOTE: 8 ayes--Nabers, Hernandez, Hendricks, Harrison, Jones,
Laney, McFarland, J. Wilson

0 nay

1 present, not voting--Sullivant

2 absent--B. Clark, Whitmire

WITNESSES: On--Mike McCormick, Texas District and County Attorneys Assoc.

DIGEST: This bill will require prosecutors to make a full and complete opening argument, and give them the right to make a concluding summation and rebuttal to the jury.

PRO: This change will give defense counsel the same opportunity that prosecutors have to rebut arguments made by the other side. Under current law, prosecutors are not always required to make an opening argument to the jury. This means that the defense counsel must anticipate what the state will argue in its final summation to the jury, and must rebut the state's claims without knowledge of what the state will say. This is unfair, since the state is not required to make its final argument without having heard the defendant's argument.

Further, nothing in this bill will keep the state from making a plea to the jury for maintaining "law and order" as part of the final argument.

CON: This bill is unnecessary, since most prosecutors already do what the bill requires. There are only a few cases where a prosecutor waives an opening argument to the jury. In these cases the arguments are likely to be so simple that the counsel for the defendant will be aware of them and will not be disadvantaged by the state's failure to make an opening argument.

Further, the bill does not define what is meant by a "full and complete opening address"; a lot of confusion will result in trying to interpret this phrase.

COMMENTARY: The order of argument to the jury in criminal cases is regulated by the presiding judge. After all the evidence in a case has been presented, the state has the option of making an opening address. This is followed by the defense's closing argument. After the defense has rested, the state has the right to make a final argument to the jury, summarizing all of the evidence, rebutting any arguments made by the defense counsel, and making a plea for law and order.